REMARKS

The present application was filed on November 20, 2003 with claims 1-19. Claims 11 and 19 have been previously canceled.

Claims 1-16 and 18 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Claims 1-10, 12 and 15-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,526,392 (hereinafter "Dietrich") in view of U.S. Patent Application Publication No. 2004/0249699 (hereinafter "Laurent"). Claim 13 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over references including Dietrich and Laurent.

With regard to the §101 rejection, Applicants respectfully note that the preambles of claims 1 and 18 as previously presented each specified that the steps are executed by a computer. Notwithstanding the foregoing, Applicants have amended these claims so as to recite a limitation wherein the steps are executed by one or more computers. Support for this limitation may be found in the specification at, for example, page 17, line 10, to page 18, line 24, with reference to FIG. 3.

With regard to the §103 rejection, Applicants note that claim 1, as previously presented, included a limitation directed to <u>controlling a usage load level of the one or more computing resources by modulating combinations of price levels and service levels offered to the one or more users of the one or more computing resources</u>. In an illustrative embodiment described in the specification at, for example, page 6, lines 24-27, information on current and predicted loads on the resources can be leveraged to directed prices and service offerings to induce smoother load levels by inciting customers to shift their usage behavior through targeted pricing and service offering modulation.

In formulating the present rejection, the Examiner concedes that Dietrich fails to disclose any arrangement which includes modulating combinations of price and service levels. Rather, the Examiner contends the alleged teachings of paragraph [0118] of Laurent "regarding price/service level combinations" teaches controlling a usage load level of the one or more resources by modulating combinations of price levels and service levels offered to the one or more users of the one or more resources. See the present Office Action at page 6.

Applicants respectfully submit that the relied-upon portion of Laurent teaches various "combinations extracted from bundles of futures contracts made available for trading by the FFS [FutureFreight system]," and that a given "route/mode combination . . . is selected due to this transaction being acceptable (price and service level) to buyer and seller." See Laurent at paragraph [0118].

In other words, Laurent discloses selecting between price/service level combinations which have already been offered. There is no teaching or suggestion regarding <u>modulating offered combinations of price levels and services levels</u>, as recited in claim 1, much less doing so in order to control a usage load level of one or more resources. As such, Laurent fails to remedy the admitted fundamental deficiency of Dietrich with regard to the limitations of claim 1.

Notwithstanding the foregoing traversal, Applicants have amended independent claims 1, 17 and 18 without prejudice. While Applicants believe that the claims, in their form prior to the present amendment, were patentable over Dietrich and Laurent, Applicants have nonetheless amended the independent claims solely in an effort to move the case through to allowance.

More particularly, the independent claims have been amended so as to include limitations wherein the combinations are determined by <u>(i)</u> computing a set of prices and <u>(ii) computing</u> a set of service levels to offer to the one or more users at each one of the prices in the set of prices. Support for this amendment may be found in the specification at, for example, page 7, lines 3-7. By contrast, in the conventional techniques taught by Dietrich and Laurent, the service levels are <u>predetermined</u> - the only variable is the <u>price</u> at which each service level is offered. See, e.g., Dietrich at column 3, line 63, to column 4, line 6, and Laurent at paragraph [0118].

Applicants also assert that dependent claims 2-10 and 12-16 are patentable over the reference not only for the reasons given above, but also because one or more of said dependent claims recite separately patentable subject matter in their own right.

By way of example only, claim 10 recites that the management model generating step further comprises evaluating a revenue value for each price-service-level combination. Dietrich at column 1, lines 48-52, cited by the present Office Action at page 8, states that "one can manage the overall net profitability . . . of the service organization's resources." Since Dietrich never computes any

price-service-level combinations, Dietrich thus never evaluates a net profitability for each of such price-service-level combinations.

In view of the above, Applicants believe that the present application is in condition for allowance, and respectfully request withdrawal of the §103(a) rejections.

Respectfully submitted,

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